

28-5,6,7,8,9



Kansas Administrative Regulations Kansas Department of Health and Environment

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Where possible KDHE will append changed regulations to the appropriate article. Once again, the lack of any attachments should not be construed as meaning there are no revisions.

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Office of Public Information
Kansas Department of Health & Environment

Notes

The Kansas Register Notes the Following changes:

28-5-2 Amended	V. 16, p. 1355
28-5-6 Amended	V. 16, p. 1355
28-5-7 Amended	V. 16, p. 1355
28-5-9 Amended	V. 16, p. 1355

(g) The participating agency shall decide whether to amend the information in accordance with the request within 30 calendar days after receipt of the request.

(h) The agency shall inform the parents of the agency refusal to amend the information in accordance with the request. The agency shall advise the parents of the right to a hearing.

(i) The participating agency shall, on request, provide an opportunity for a hearing to challenge information in records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(1) The participating agency shall amend the information, if, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. The agency shall inform the parent in writing.

(2) The participating agency shall inform the parent of the right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency, if, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child.

(3) Any explanation placed in the records of the child under this section shall:

(A) be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(B) be disclosed to the party, if the records of the child or the contested portion is disclosed by the agency to any party.

(4) A hearing regarding record content shall be conducted according to the procedures of the family education rights and privacy act (FERPA), section 99.22, as in effect on July 1, 1993.

(j) Parental consent shall be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials of participating agencies collecting or using the information, subject to paragraph (k) of this section; or

(2) used for any purpose other than meeting a requirement of Part H of IDEA.

(k) A participating agency or an institution subject to the family education rights and privacy act, section 99.313, as in effect on July 1, 1993, or IDEA shall not release information from records

to participating agencies without parental consent unless authorized to do so.

(l) Parents, if they refuse to provide consent under this section, shall be given information regarding their due process rights and an opportunity to implement a due process hearing.

(m) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. Protection methods shall include the following procedures.

(1) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(2) All persons collecting or using personally identifiable information shall receive training or instruction regarding the state's policies and procedures under Part H of IDEA and the family education rights and privacy act, as in effect on July 1, 1993.

(3) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(n) The public agency shall inform parents when personally identifiable information is collected, maintained, or used under Part H of IDEA is no longer needed to provide Part H services to the child.

(o) The information shall be destroyed at the request of the parents. However, a permanent record of a child's name, address, phone number, birthdate, developmental status, and services provided may be maintained without time limitation.

(p) Children shall be afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(q) Kansas infant-toddler services of the Kansas department of health and environment shall monitor and supervise the procedures included in this regulation to insure that policies and procedures are followed and that the requirements of the Act and the regulations of Part H of IDEA are met. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995.)

Article 5.—SEWAGE AND EXCRETA DISPOSAL

28-5-1. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966; revoked, E-72-11, March 17, 1972; revoked Jan. 1, 1973.)

28-5-2. **Privies and seepage pits.** No person, company, corporation, association or institution shall construct, maintain, use, or permit to be constructed or maintained any privy, seepage bed or similar device into which a water closet, lavatory, kitchen sink, or similar plumbing fixture is drained, within fifty feet of any well or spring or other source of water used for drinking or culinary purposes; nor shall any such privy or seepage pit be drained or permitted to drain into any stream, ditch or the ground surface. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966; amended, E-72-11, March 17, 1972; amended Jan. 1, 1973.)

28-5-3. **Drains.** All drains carrying domestic sewage, human or animal excreta located within 50 feet of a source of water supply shall be watertight. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1966.)

28-5-4. **Public health nuisances.** The following conditions and practices are declared to be public nuisances hazardous to public health and local boards of health are directed to order their abatement whenever they are called to their attention by the state department of health and environment or any citizen of the state. (1) Any privy, privy vault, or other place used for the deposit of human excreta which permits animals or insects access to the excreta, which produces foul or objectionable odors, or is located so as to make pollution of a domestic water supply probable.

(2) The collection or accumulation of any organic materials such as swill, meat scraps, dead fish, shells, bones, decaying vegetables, dead carcasses, human or animal excrement, or any kind of offal that may decompose and create an attraction or breeding place for flies, mosquitoes or rodents.

(3) Any domestic animal pen that pollutes a domestic water supply, underground waterbearing formation; or stream in a manner that is hazardous to human health; or is maintained in a manner that creates a fly attraction or breeding place for flies or mosquitoes; or is a rodent harborage or breeding place. (Authorized by K.S.A. 1975 Supp. 65-101, 65-171d, 65-202; effective Jan. 1, 1966; amended, E-72-11, March 17, 1972; amended Jan. 1, 1973; amended May 1, 1976.)

28-5-5. **Discharge of domestic sewage into wells, pits, or sub-surface excavations prohibited.** No person, company, corporation or institution shall excavate, drill, construct or use or

permit to be constructed or used any well, pit, mine shaft, or subsurface excavation for the disposal of untreated or inadequately treated domestic sewage. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973.)

28-5-6. **Discharge of domestic wastes.** All domestic wastes from sanitary fixtures located in any dwelling, shop, school, or other building used as a home or meeting place for humans shall be discharged into a community sewer system approved by the state department of health, or into a private sewer system operating under a permit from the department or a septic tank located, designed, and operated in accordance with standards set forth in state health department bulletin 4-2. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973.)

28-5-7. **Discharge of septic tank effluent.** All effluent from a septic tank shall be discharged into (1) a properly designed and maintained soil absorption field; or (2) a properly designed sewage treatment facility operating under a valid permit from the state department of health; or (3) into a seepage pit provided it is so designed, constructed, and operated as not to contaminate any ground water or impair the quality of any ground water for any beneficial use. Written permission to construct such a seepage pit is to be obtained from the local board of health having jurisdiction or the state department of health providing there is no local rule, regulation, or code prohibiting the use of such a seepage pit. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973.)

28-5-8. (Authorized by K.S.A. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; revoked May 10, 1996.)

28-5-9. **Variance.** The department may grant a variance from requirements of 28-5-2 through 28-5-8 subject to the following considerations: (1) The features of the site for which the variance is requested are not compatible with requirements of the regulations.

(2) Alternate methods are available which will attain the objectives of the regulations.

(3) The department determines that the variation from the regulations will not adversely affect public health and safety or natural resources.

An application for variance must be filed with and approved by the department prior to the is-

suance of a permit and prior to construction of such facility for receipt of sewage. (Authorized by K.S.A. 65-171d; effective Jan. 1, 1973.)

**Article 6.—COMMON DRINKING CUP;
COMMON TOWEL**

28-6-1 to 28-6-2. (Authorized by K.S.A. 65-101, 65-104, K.S.A. 1965 Supp. 65-128; effective Jan. 1, 1966; revoked May 10, 1996.)

**Article 7.—STERILIZATION OF PUBLIC
FOOD AND DRINKING UTENSILS**

28-7-1 to 28-7-9. (Authorized by K.S.A. 65-101, 65-104, K.S.A. 1965 Supp. 65-128; effective Jan. 1, 1966; revoked May 10, 1996.)

**Article 8.—HOME HEALTH FEE
SCHEDULE**

28-8-1. (Authorized by K.S.A. 1969 Supp. 65-222; effective, E-69-4, Dec. 11, 1968; effective Jan. 1, 1970; revoked May 10, 1996.)

**Article 9.—CONSTRUCTION,
MAINTENANCE AND USE OF
MAUSOLEUMS**

28-9-1. **Burial structure above ground.** Any person, firm or corporation desirous of constructing any burial structure which shall be wholly or in part above ground shall apply to the Kansas state department of health for a permit for such construction. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-2. **Application for permits.** Application for permits for such construction shall be made on forms furnished by the state department of health and shall be accompanied by detailed plans and specifications in triplicate. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-3. **Secretary issue permit in triplicate.** On approval of said plans and specifications for the proposed burial structure by the engineer of the department, the secretary shall issue a permit in triplicate for the construction, and shall send two copies of the permit, approved plans and specifications to the party who makes application, and retain one copy for the files of the department. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-4. **Embalming of dead bodies.** No dead body shall be interred or deposited in any public mausoleum or private mausoleum of more than two crypts unless the body has first been embalmed in compliance with recognized embalming practice. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-5. **Details of burial structures.** In the design of burial structures the following details must be included:

(a) The structure must be so designed that each cell or crypt shall be readily accessible for inspection by persons authorized to make such inspection before final interment.

(b) Each crypt shall be so designed that it can be sealed to prevent odors from reaching the public space or corridor of the mausoleum.

(c) In case a ventilation and drainage system is provided, the system must be one acceptable to the department. The minimum size of pipes for either ventilation or drainage shall be 1½ inches and the ventilation or drainage from one crypt shall not pass through another.

(d) In case a sealed crypt is used without pipes for drainage or ventilation the inner surface of the crypt and crypt sealing slab shall be made air and moisture proof by a protective coating of an approved paint. A paint having a bituminous base is recommended and if necessary to proper drying and bonding to the concrete surface, it shall be applied hot.

(e) No live air spaces smaller in size than will allow for thorough inspection and repairing of joints from the inside of said air spaces will be allowed, except the pipes for ventilation and drainage of crypts.

(f) Hollow walls shall be sealed so as to make the air space "dead."

(g) Any burial structure intended for public or community use shall be provided with some type of heating system acceptable to the department.

(h) In the case of public mausoleums, or those with a corridor or chapel, suitable ventilation, independent of the above, and directly connected to the outside air, shall be provided.

(i) Special attention will be given to such details as: Depth and width of foundations; size and spacing of reinforcing steel; materials and methods used in construction of roof; permanence of material used for exterior of walls as determined by these for absorption of moisture; materials

used for window and door sash, grills, gates, etc.; materials and method used in anchoring or tying walls together where they are made up of two or more independent walls, materials for concrete plaster, mortar, etc. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-6. Individual mausoleums; approval of plans, specifications and testing of materials. In the case of individual mausoleums, the permits issued by the department shall be a license to manufacture. Any deviations from the approved plans and specifications must be approved in writing by the engineer for the department. Inspections will be made of the manufacturing processes and of field installations with special attention being given to all factors which affect the permanence of the structures. When necessary to determine the permanence, all or any part of one or more mausoleums, or test specimens from the mixes used, shall be delivered to a laboratory for testing. The transportation and testing shall be an expense of the manufacturer and shall be done as directed by the engineer for the department. Permanent identification of the manufacturer shall be stamped in an accessible place on the cover and the vault along with the date of manufacture. Such other records shall be kept as are found necessary by the department. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-7. Individual mausoleums; replacement of structure or parts thereof. Whenever the failure of one of these mausoleums causes offensive odors or effluvia to arise therefrom, and such failure comes to the attention of the department, the manufacturer shall be required to replace or repair the structure or the defective portion. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

28-9-8. Individual mausoleums; revocation of permit. The permit may be revoked for cause upon notice to the manufacturer by the secretary of the board. (Authorized by K.S.A. 17-1324; effective Jan. 1, 1966.)

Article 10.—SANITARY CONDITIONS AROUND RESERVOIRS

28-10-1 to 28-10-13. (Authorized by K.S.A. 1965 Supp. 65-187; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

28-10-14. **Reserved.**

A. Sanitation Zone Boundaries

28-10-15. Boundaries of Cedar Bluff reservoir sanitation zone. (Official map filed with revisor of statutes, Topeka, and register of deeds in affected counties.) The boundaries of the

DRAWING 69-1

Official Map Cedar Bluff Reservoir Sanitation Area

Cedar Bluff reservoir sanitation zone are hereby set and established as shown on the official map drawing 69-1 approved by the Kansas state board of health: *Provided*, That no land located within the corporate limits of any city located within these boundaries, or any land subject to a county sanitary code which contains provisions for the control of sewage disposal, water supplies and refuse handling practices and is adopted under the provisions of K.S.A. 19-3701 through 19-3708 shall be considered to be a part of the sanitation zone or subject to any sanitation zone regulations. (Authorized by K.S.A. 1969 Supp. 65-187; effective, E-68-23, Aug. 9, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970.)

Article 5.--SEWAGE AND EXCRETA DISPOSAL

Regulations 28-5-2 Location of wastewater disposal systems. No person, company, corporation, association, or institution shall construct, maintain, use, or permit to be constructed or maintained any wastewater disposal system into which domestic wastewater is drained, within 50 feet of any water well or spring; nor shall any such wastewater disposal system be drained or permitted to drain into any stream, ditch, or the ground surface. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective Jan. 1, 1966; amended, E-72-11, March 17, 1972; amended Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-6 Discharge of domestic wastes. All domestic wastes from sanitary fixtures located in any dwelling, shop, school, or other building used as a home or meeting place for humans shall be discharged into a public sewer system approved by the Kansas department of health and environment, or into a private sewer system approved by the Kansas department of health and environment or the appropriate local authority. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-7 Private sewer systems. All private sewer systems shall be located, designed, and operated in accordance with standards set forth in county sanitary codes approved by the Kansas department of health and environment before July 1, 1997, or in the absence of such codes, with standards set forth in the Kansas department of health and environment bulletin 4-2, ``Minimum Design Standards for Onsite Wastewater Systems,'' revised March, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective, E-72-11, March 17, 1972; effective Jan. 1, 1973; amended Sept. 5, 1997.)

28-5-9 Variance. (a) (1) In counties with no locally adopted sanitary code, a variance from requirements of K.A.R. 28-5-2 through K.A.R. 28-5-7 may be granted by the Kansas department of health and environment, if the following conditions are met.

(A) The features of the site for which the variance is requested are not compatible with requirements of the regulations.

(B) Alternate methods are available that will attain the objectives of the regulations.

(C) The variation from the regulations will not adversely affect public health or the environment.

(2) Any person requesting a variance from these regulations shall provide the Kansas department of health and environment with a written request for a variance. This request shall include a description of the proposed wastewater treatment system, information on the treatment effectiveness of the proposed system, and any other information that the Kansas department of health and environment deems necessary to determine the effectiveness and reliability of the proposed system. No such proposed system shall be constructed without the written approval of the Kansas department of health and environment.

(b) In counties with adopted sanitary codes containing a variance clause, the local administrative agency has the authority to grant variances from requirements of the local code.

(c) Before construction of any facility for receipt of sewage, an application for variance shall be filed with and approved by either the Kansas department of health and environment or the appropriate local authority in accordance with provisions of this regulation. (Authorized by and implementing K.S.A. 1996 Supp. 65-171d; effective Jan. 1, 1973; amended Sept. 5, 1997.)

Gary R. Mitchell
Secretary of Health
and Environment